

In the High Court of Judicature at Madras

Dated:17.10.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and

The Hon'ble Mr. Justice S. TAMILVANAN

Habeas Corpus Petition No.895 of 2006

Sivagami

... Petitioner

vs.

1. The Secretary to Government
Food, Co-operation and Consumer Protection
Department,
Government of Tamil Nadu
Fort St. George
Chennai 600 009.

2. The District Magistrate,
and District Collector
Villupuram District
Vilupuram.

3. The Secretary to Government
Food and Consumer Protection Department
Government of India
New Delhi.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus calling for the records in connection with the order of detention passed by the Second Respondent dated 18.8.2006 in No.C2/37146/2006 against the petitioner's husband Sundharam Son of Kadirvel aged about 42 years who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For petitioner : Mr. V. Parthiban

For respondents : Mr. M. Babu Muthu Meeran
1 & 2 Addl. Public Prosecutor

Mr. P. Kumaresan, ACGSC for R.3

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner Sivagami, wife of the detenu by name Sundharam, who was detained as a "Black Marketeer" as contemplated under Section 3(2)(a) read with 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, by the impugned detention order dated 18.08.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as the respondents.

3. At the foremost learned counsel appearing for the petitioner by taking us through the information furnished in para 5 of the Grounds of Detention contended that the impugned detention order is liable to be interfered on the ground of non-application of mind on the part of the detaining authority. Elaborating the above said contention, learned counsel has pointed out that in the said paragraph though the detaining authority has noted the pendency of bail application before the Judicial Magistrate No.I, Villupuram and filing of bail application before the District and Sessions Court, Villupuram, and the subsequent order dismissing the said petition as withdrawn, while arriving subjective satisfaction, has observed,
".... However, I am well aware that, it is very likely that he may come out on bail by filing a bail application before the same or Higher Court.
... "

4. As rightly pointed out by the learned counsel for the petitioner, though C.M.P.No.5738 of 2006 filed before the District and Sessions Court, Villupuram has been withdrawn by the petitioner, on the date of passing of the impugned detention order, the bail application filed by the detenu before the learned before the Judicial Magistrate No.I, Villupuram, viz., CMP. No.2541 of 2006, was very well pending. Though a reference was made to the said bail application in the same paragraph, the detaining authority has mechanically arrived a conclusion that by filing bail application before the same or higher Court the detenu will come out and in that event he will indulge in future activities, which will be prejudicial to the maintenance of public distribution of essential commodities. We are satisfied that the detaining authority has not considered the fact that unless the bail petition, namely, CMP.2541 of 2006 pending on the file of Judicial Magistrate No.I, Villupuram was disposed of one way or the other, he cannot file another application either before the same Court or higher Court. The detaining authority has not taken note of such material aspect and we are satisfied that he

has not applied his mind. On this ground, the order of detention impugned in the petition is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Food, Co-operation and Consumer Protection
Department,
Government of Tamil Nadu
Fort St. George
Chennai 600 009.
2. The District Magistrate
and District Collector
Villupuram District
Vilupuram.
3. The Secretary to Government
Food and Consumer Protection Department
Government of India
New Delhi.
4. The Secretary to Government of Tamil Nadu,
Public (Law & Order) Department,
Fort St.George, Chennai-9.
5. The Superintendent
Central Prison, Cuddalore.
6. The Public Prosecutor,
High Court, Madras.

ONE CC TO MR.C.PRAKASAM, ADVOCATE (SR NO 48768)
ONE CC TO MR.P. KUMARESAN, ASCGSC SR NO 49188

Order in
H.C.P.No.895 of 2006

JRG (CO)
BP/27.10

Dt.17.10.2006